

THE DUCKWORTH COMPANY
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August 26, 1999

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket
No. 99-217; Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

We write in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. We enclose six (6) copies of this letter, in addition to this original.

We are concerned that any action by the FCC regarding access to private property by large numbers of communications companies may adversely affect the conduct of our business and needlessly raise additional legal issues. We believe that forced building access is an unconstitutional taking of property. The Commission's public notice also raises a number of other issues that concern us.

Background

The Duckworth Company is in the Commercial Real Estate Business. We own five (5) properties and manage six (6). The five (5) that we presently own are:

The Caryle Building
3760 I-55 N.
Jackson, MS 39211
Total Square Footage - 14,551

Community Bank Plaza
3500 Lakeland Drive
Flowood, MS 39208
Total Square Footage - 17,804

Crypress Ridge
1867 Crane Ridge Drive
Jackson, MS 39216
Total Square Footage - 54,576

Mony Building
1640 Lelia Drive
Jackson, Ms 39216
Total Square Footage - 16,328

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500 Greymont Building
500 Greymont
Jackson, MS 39202
Total Square Footage - 34,936

The six (6) that we presently manage are:

Odyssey North Shopping Center
731 E. Pear Orchard Road
Ridgeland, MS 39157
Total Square Footage - 115,480

Pear Orchard Village
1625 E. County Line Road
Jackson, MS 39211
Total Square Footage - 76,731

LeFleur's Gallery
4800 I-55 N. Frontage Road
Jackson, MS 39211
Total Square Footage - 79,164

The Quarter Specialty Center
1855 Lakeland Drive
Jackson, MS 39216
Total Square Footage - 63,104

The Market at Grant's Ferry
5610 Highway 25
Brandon, MS 39047
Total Square Footage - 73,500

Canebrake
Airport Road
Flowood, MS 39208
Total Square Footage - 57,000

Issues Raised by the FCC's Notice

We do not believe the FCC needs to act in this field because we are doing everything we can to satisfy our tenants' demands for access to telecommunications.

1. FCC Action is Not Necessary.

A building owner and/or manager has much more extensive leverage in negotiating with Telecommunication companies than individual tenants.

2. There Is No Such Thing As "Nondiscriminatory" Access.

- ◆ There is no such thing as nondiscriminatory access. There are dozens of providers, but limited space in buildings means that only a handful of providers can install facilities in buildings. "Nondiscriminatory": access discriminates in favor of the first few entrants, creating a barrier to entry for small providers and future providers. Building owners want to enhance competition and be able to do business with all providers, not just the few giants of today.
- ◆ A building owner must have control over who enters the building, especially when there are multiple providers involved. A building owner faces liability for damage to building, leased

premises, and facilities of other providers, and for personal injury to tenants and visitors. A building owner is also liable for safety code violations. Allowing forced access, even misleadingly couched as "nondiscriminatory" access, shifts the costs of correctly installing equipment in a way that will not harm the tenants or the physical premises to the building owner.

- ◆ There is no such thing as discriminatory building access because the terms of building access must necessarily vary. For example, a new company without a track record poses greater risks than an established one, so indemnity, insurance, security deposit, remedies and other terms may differ. The value of building space and other terms also depend on many factors, such as location and available space.
- ◆ Building owners must be vigilant for the qualifications and reliability of telecommunications providers in order to protect tenants.
- ◆ "Nondiscriminatory" access amounts to federal rent control. Building owners often have no control over terms of access for Bell companies and other incumbents: they were established in monopoly environment. Only fair solution is to let the new competitive market decide and allow owners to renegotiate terms of all contracts. A building owner must not be forced to apply old contracts with the Bell company as lowest common denominator because the building owner had no real choice in negotiating those contracts.
- ◆ If carriers can discriminate by choosing which buildings and tenants to serve, building owners should be allowed to do the same.

3. Scope of Easements.

- ◆ FCC cannot expand scope of the access rights held by every incumbent carrier (the Belltype companies) to allow every competitor to use the same easement or right-of-way. Grants in many buildings are narrow and limited to facilities owned by the grantee.
- ◆ If owners had known government would allow other companies to piggyback on the incumbent, they would have negotiated different terms. Expanding rights now would be an unconstitutional taking.

4. Demarcation Point.

- ◆ The current demarcation point rules are working because they offer flexibility. There is no need to change them.
- ◆ Each building is a different case, depending on owner's business plan, nature of property and nature of tenants in the building. Some building owners are prepared to be responsible for

managing wiring and others are not.

5. Exclusive Contracts.

- ◆ None

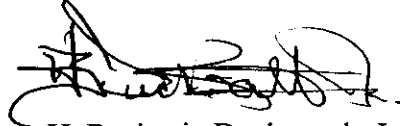
6. Expansion of Satellite Dish Rules.

- ◆ The FCC should not expand the rules to include data and other services, because the law only applies to antennas used to receive video programming.
- ◆ Expanding the rules would only hurt tenants. We have many technology related tenants in many of our properties and we diligently supervise each installation. It is our experience that this supervision is the difference between correct installation and incorrect installation which could compromise our roof structures.

In conclusion, we urge the FCC to consider carefully any action it may take, as we believe that the current proposals are unwarranted and unconstitutional. Thank you for your attention to our concerns.

Sincerely,

THE DUCKWORTH COMPANY, INC.



H. Benjamin Duckworth, Jr.
President